SUPREME COURT OF THE UNITED STATES

Nos. 01–593 and 01–594

DOLE FOOD COMPANY, ET AL., PETITIONERS
01–593 *v.*
GERARDO DENNIS PATRICKSON ET AL.

DEAD SEA BROMINE CO., LTD., AND BROMINE COMPOUNDS LIMITED, PETITIONERS
01–594 *v.*
GERARDO DENNIS PATRICKSON ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[April 22, 2003]

JUSTICE KENNEDY delivered the opinion of the Court.

Foreign states may invoke certain rights and immunities in litigation under the Foreign Sovereign Immunities Act of 1976 (FSIA or Act), Pub. L. 94–583, 90 Stat. 2891. Some of the Act's provisions also may be invoked by a corporate entity that is an "instrumentality" of a foreign state as defined by the Act. *Republic of Argentina* v. *Weltover, Inc.*, 504 U. S. 607, 611 (1992); *Verlinden B. V.* v. *Central Bank of Nigeria*, 461 U. S. 480, 488 (1983). The corporate entities in this action claim instrumentality status to invoke the Act's provisions allowing removal of state-court actions to federal court. As the action comes to us, it presents two questions. The first is whether a corporate subsidiary can claim instrumentality status where the foreign state does not own a majority of its shares but

does own a majority of the shares of a corporate parent one or more tiers above the subsidiary. The second question is whether a corporation's instrumentality status is defined as of the time an alleged tort or other actionable wrong occurred or, on the other hand, at the time suit is filed. We granted certiorari, 536 U. S. 956 (2002).

I

The underlying action was filed in a state court in Hawaii in 1997 against Dole Food Company and other companies (Dole petitioners). Plaintiffs in the action were a group of farm workers from Costa Rica, Ecuador, Guatemala, and Panama who alleged injury from exposure to dibromochloropropane, a chemical used as an agricultural pesticide in their home countries. The Dole petitioners impleaded petitioners Dead Sea Bromine Co., Ltd., and Bromine Compounds, Ltd. (collectively, the Dead Sea Companies). The merits of the suit are not before us.

The Dole petitioners removed the action to the United States District Court for the District of Hawaii under 28 U. S. C. §1441(a), arguing that the federal common law of foreign relations provided federal-question jurisdiction under §1331. The District Court agreed there was federal subject-matter jurisdiction under the federal common law of foreign relations but, nevertheless, dismissed the case on grounds of *forum non conveniens*.

The Dead Sea Companies removed under a separate theory. They claimed to be instrumentalities of a foreign state as defined by the FSIA, entitling them to removal under §1441(d). The District Court held that the Dead Sea Companies are not instrumentalities of a foreign state for purposes of the FSIA and are not entitled to removal on that basis. Civ. No. 97–01516HG (D. Haw., Sept. 9, 1998), App. to Pet. for Cert. in No. 01–594, p. 79a.

The Court of Appeals reversed. Addressing the ground relied on by the Dole petitioners, it held removal could not

rest on the federal common law of foreign relations. 251 F. 3d 795, 800 (CA9 2001). In this Court the Dole petitioners did not seek review of that portion of the Court of Appeals' ruling, and we do not address it. Accordingly, the writ of certiorari in No. 01–593 is dismissed.

The Court of Appeals also reversed the order allowing removal at the instance of the Dead Sea Companies, who alleged they were instrumentalities of the State of Israel. The Court of Appeals noted, but declined to answer, the question whether status as an instrumentality of a foreign state is assessed at the time of the alleged wrongdoing or at the time suit is filed. It went on to hold that the Dead Sea Companies, even at the earlier date, were not instrumentalities of Israel because they did not meet the Act's definition of instrumentality.

In order to prevail here, the Dead Sea Companies must show both that instrumentality status is determined as of the time the alleged tort occurred and that they can claim instrumentality status even though they were but subsidiaries of a parent owned by the State of Israel. We address each question in turn. In No. 01–594, the case in which the Dead Sea Companies are petitioners, we now affirm.

II

A

Title 28 U. S. C. §1441(d) governs removal of actions against foreign states. It provides that "[a]ny civil action brought in a State court against a foreign state as defined in [28 U. S. C. §1603(a)] may be removed by the foreign state to the district court of the United States for the district and division embracing the place where such action is pending." See also 28 U. S. C. §1330 (governing original jurisdiction). Section 1603(a), part of the FSIA, defines "foreign state" to include an "agency or instrumentality of a foreign state." "[A]gency or instrumentality of a foreign state" is defined, in turn, as:

"[A]ny entity—

"(1) which is a separate legal person, corporate or otherwise, and

"(2) which is an organ of a foreign state or political subdivision thereof, or a majority of whose shares or other ownership interest is owned by a foreign state or political subdivision thereof, and

"(3) which is neither a citizen of a State of the United States . . . nor created under the laws of any third country." §1603(b).

B

The Court of Appeals resolved the question of the FSIA's applicability by holding that a subsidiary of an instrumentality is not itself entitled to instrumentality status. Its holding was correct.

The State of Israel did not have direct ownership of shares in either of the Dead Sea Companies at any time pertinent to this suit. Rather, these companies were, at various times, separated from the State of Israel by one or more intermediate corporate tiers. For example, from 1984–1985, Israel wholly owned a company called Israeli Chemicals, Ltd.; which owned a majority of shares in another company called Dead Sea Works, Ltd.; which owned a majority of shares in Dead Sea Bromine Co., Ltd.; which owned a majority of shares in Bromine Compounds, Ltd.

The Dead Sea Companies, as indirect subsidiaries of the State of Israel, were not instrumentalities of Israel under the FSIA at any time. Those companies cannot come within the statutory language which grants status as an instrumentality of a foreign state to an entity a "majority of whose shares or other ownership interest is owned by a foreign state or political subdivision thereof." §1603(b)(2). We hold that only direct ownership of a majority of shares by the foreign state satisfies the statutory requirement.

Section 1603(b)(2) speaks of ownership. The Dead Sea Companies urge us to ignore corporate formalities and use the colloquial sense of that term. They ask whether, in common parlance, Israel would be said to own the Dead Sea Companies. We reject this analysis. In issues of corporate law structure often matters. It is evident from the Act's text that Congress was aware of settled principles of corporate law and legislated within that context. The language of §1603(b)(2) refers to ownership of "shares," showing that Congress intended statutory coverage to turn on formal corporate ownership. Likewise, §1603(b)(1), another component of the definition of instrumentality, refers to a "separate legal person, corporate or otherwise." In light of these indicia that Congress had corporate formalities in mind, we assess whether Israel owned shares in the Dead Sea Companies as a matter of corporate law, irrespective of whether Israel could be said to have owned the Dead Sea Companies in everyday parlance.

A basic tenet of American corporate law is that the corporation and its shareholders are distinct entities. See, *e.g., First Nat. City Bank* v. *Banco Para el Comercio Exterior de Cuba*, 462 U. S. 611, 625 (1983) ("Separate legal personality has been described as 'an almost indispensable aspect of the public corporation'"); *Burnet* v. *Clark*, 287 U. S. 410, 415 (1932) ("A corporation and its stockholders are generally to be treated as separate entities"). An individual shareholder, by virtue of his ownership of shares, does not own the corporation's assets and, as a result, does not own subsidiary corporations in which the corporation holds an interest. See 1 Fletcher Cyclopedia of the Law of Private Corporations §31 (rev. ed. 1999). A corporate parent which owns the shares of a subsidiary does not, for that reason alone, own or have legal title to the assets of the subsidiary; and, it follows with even greater force, the parent does not own or have legal title to

the subsidiaries of the subsidiary. See *id.,* §31, at 514 ("The properties of two corporations are distinct, though the same shareholders own or control both. A holding corporation does not own the subsidiary's property"). The fact that the shareholder is a foreign state does not change the analysis. See *First Nat. City Bank, supra*, at 626–627 ("[G]overnment instrumentalities established as juridical entities distinct and independent from their sovereign should normally be treated as such").

Applying these principles, it follows that Israel did not own a majority of shares in the Dead Sea Companies. The State of Israel owned a majority of shares, at various times, in companies one or more corporate tiers above the Dead Sea Companies, but at no time did Israel own a majority of shares in the Dead Sea Companies. Those companies were subsidiaries of other corporations.

The veil separating corporations and their shareholders may be pierced in some circumstances, and the Dead Sea Companies essentially urge us to interpret the FSIA as piercing the veil in all cases. The doctrine of piercing the corporate veil, however, is the rare exception, applied in the case of fraud or certain other exceptional circumstances, see, *e.g., Burnet, supra*, at 415; 1 Fletcher, *supra,* §§41 to 41.20, and usually determined on a case-by-case basis. The Dead Sea Companies have referred us to no authority for extending the doctrine so far that, as a categorical matter, all subsidiaries are deemed to be the same as the parent corporation. The text of the FSIA gives no indication that Congress intended us to depart from the general rules regarding corporate formalities.

Where Congress intends to refer to ownership in other than the formal sense, it knows how to do so. Various federal statutes refer to "direct and indirect ownership." See*, e.g.*, 5 U. S. C. §8477(a)(4)(G)(iii) (referring to an interest "owned directly or indirectly"); 12 U. S. C. §84(c)(5) (referring to "any corporation wholly owned

directly or indirectly by the United States"); 15 U. S. C. §79b(a)(8)(A) (referring to securities "which are directly or indirectly owned, controlled, or held with power to vote"); §1802(3) ("The term 'newspaper owner' means any person who owns or controls directly, or indirectly through separate or subsidiary corporations, one or more newspaper publications"). The absence of this language in 28 U. S. C. §1603(b) instructs us that Congress did not intend to disregard structural ownership rules.

The FSIA's definition of instrumentality refers to a foreign state's majority ownership of "shares or other ownership interest." §1603(b)(2). The Dead Sea Companies would have us read "other ownership interest" to include a state's "interest" in its instrumentality's subsidiary. The better reading of the text, in our view, does not support this argument. The words "other ownership interest," when following the word "shares," should be interpreted to refer to a type of interest other than ownership of stock. The statute had to be written for the contingency of ownership forms in other countries, or even in this country, that depart from conventional corporate structures. The statutory phrase "other ownership interest" is best understood to accomplish this objective. Reading the term to refer to a state's interest in entities lower on the corporate ladder would make the specific reference to "shares" redundant. Absent a statutory text or structure that requires us to depart from normal rules of construction, we should not construe the statute in a manner that is strained and, at the same time, would render a statutory term superfluous. See *Mertens* v. *Hewitt Associates*, 508 U. S. 248, 258 (1993) ("We will not read the statute to render the modifier superfluous"); *United States* v. *Nordic Village, Inc.*, 503 U. S. 30, 36 (1992) (declining to adopt a construction that would violate the "settled rule that a statute must, if possible, be construed in such fashion that every word has some opera-

tive effect").

The Dead Sea Companies say that the State of Israel exercised considerable control over the their operations, notwithstanding Israel's indirect relationship to those companies. They appear to think that, in determining instrumentality status under the Act, control may be substituted for an ownership interest. Control and ownership, however, are distinct concepts. See, *e.g., United States* v. *Bestfoods*, 524 U. S. 51, 64–65 (1998) (distinguishing between "operation" and "ownership" of a subsidiary's assets for purposes of Comprehensive Environmental Response, Compensation, and Liability Act of 1980 liability). The terms of §1603(b)(2) are explicit and straightforward. Majority ownership by a foreign state, not control, is the benchmark of instrumentality status. We need not delve into Israeli law or examine the extent of Israel's involvement in the Dead Sea Companies' operations. Even if Israel exerted the control the Dead Sea Companies describe, that would not give Israel a "majority of [the companies'] shares or other ownership interest." The statutory language will not support a control test that mandates inquiry in every case into the past details of a foreign nation's relation to a corporate entity in which it does not own a majority of the shares.

The better rule is the one supported by the statutory text and elementary principles of corporate law. A corporation is an instrumentality of a foreign state under the FSIA only if the foreign state itself owns a majority of the corporation's shares.

We now turn to the second question before us, which provides an alternative reason for affirming the Court of Appeals. See *Woods* v. *Interstate Realty Co.,* 337 U. S. 535, 537 (1949).

C

To be entitled to removal under §1441(d), the Dead Sea

Companies must show that they are entities "a majority of whose shares or other ownership interest is owned by a foreign state." §1603(b)(2). We think the plain text of this provision, because it is expressed in the present tense, requires that instrumentality status be determined at the time suit is filed.

Construing §1603(b) so that the present tense has real significance is consistent with the "longstanding principle that 'the jurisdiction of the Court depends upon the state of things at the time of the action brought.'" *Keene Corp.* v. *United States*, 508 U. S. 200, 207 (1993) (quoting *Mollan* v. *Torrance*, 9 Wheat. 537, 539 (1824)). It is well settled, for example, that federal-diversity jurisdiction depends on the citizenship of the parties at the time suit is filed. See, *e.g., Anderson* v. *Watt*, 138 U. S. 694, 702–703 (1891) ("And the [jurisdictional] inquiry is determined by the condition of the parties at the commencement of the suit"); see also *Minneapolis & St. Louis R. Co.* v. *Peoria & Pekin Union R. Co.*, 270 U. S. 580, 586 (1926) ("The jurisdiction of the lower court depends upon the state of things existing at the time the suit was brought"). The Dead Sea Companies do not dispute that the time suit is filed is determinative under §1332(a)(4), which provides for suits between "a foreign state, defined in section 1603(a) . . . , as plaintiff and citizens of a State or of different States." It would be anomalous to read §1441(d)'s words, "foreign state as defined in section 1603(a)," differently.

The Dead Sea Companies urge us to administer the FSIA like other status-based immunities, such as the qualified immunity accorded a state actor, that are based on the status of an officer at the time of the conduct giving rise to the suit. We think its comparison is inapt. Our cases applying those immunities do not involve the interpretation of a statute. See, *e.g., Spalding* v. *Vilas*, 161 U. S. 483, 493–499 (1896) (basing a decision regarding official immunity on common law and considerations of

"convenience and public policy"); *Scheuer* v. *Rhodes*, 416 U. S. 232, 239–242 (1974).

The reason for the official immunities in those cases does not apply here. The immunities for government officers prevent the threat of suit from "crippl[ing] the proper and effective administration of public affairs." *Spalding, supra*, at 498 (discussing immunity for executive officers); see also *Pierson* v. *Ray*, 386 U. S. 547, 554 (1967) (judicial immunity serves the public interest in judges who are "at liberty to exercise their functions with independence and without fear of consequences" (internal quotation marks omitted)). Foreign sovereign immunity, by contrast, is not meant to avoid chilling foreign states or their instrumentalities in the conduct of their business but to give foreign states and their instrumentalities some protection from the inconvenience of suit as a gesture of comity between the United States and other sovereigns. *Verlinden,* 461 U. S., at 486.

For the same reason, the Dead Sea Companies' reliance on *Nixon* v. *Fitzgerald*, 457 U. S. 731 (1982), is unavailing. There, we recognized that the President was immune from liability for official actions taken during his time in office, even against a suit filed when he was no longer serving in that capacity. The immunity served the same function that the other official immunities serve. See *id.,* at 751 ("Because of the singular importance of the President's duties, diversion of his energies by concern with private lawsuits would raise unique risks to the effective functioning of government"). As noted above, immunity under the FSIA does not serve the same purpose.

The immunity recognized in *Nixon* was also based on a further rationale, one not applicable here: the constitutional separation of powers. See *id.,* at 749 ("We consider this immunity a functionally mandated incident of the President's unique office, rooted in the constitutional tradition of the separation of powers and supported by our

history"). That rationale is not implicated by the statutory immunity Congress created for actions such as the one before us.

Any relationship recognized under the FSIA between the Dead Sea Companies and Israel had been severed before suit was commenced. As a result, the Dead Sea Companies would not be entitled to instrumentality status even if their theory that instrumentality status could be conferred on a subsidiary were accepted.

* * *

For these reasons, we hold first that a foreign state must itself own a majority of the shares of a corporation if the corporation is to be deemed an instrumentality of the state under the provisions of the FSIA; and we hold second that instrumentality status is determined at the time of the filing of the complaint.

The judgment of the Court of Appeals in No. 01–594 is affirmed, and the writ of certiorari in No. 01–593 is dismissed.

It is so ordered.